

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT
CIVIL ACTION NO.

21CV6

BARNSTABLE COUNTY MUTUAL)
INSURANCE COMPANY *a/s/o*)
JOHN AUGUSTA,)
Plaintiff)
v.)
NESTLE WATERS NORTH AMERICA, INC.,)
d/b/a READYREFRESH)
Defendant)
)



PARTIES

1. At all times material hereto, the plaintiff, Barnstable County Mutual Insurance Company, ("Barnstable" or "Plaintiff"), is a duly organized insurance company licensed and authorized to conduct business in the writing of fire and allied lines of insurance coverage within the Commonwealth of Massachusetts, whose principal place of business is located in the Town of Yarmouth Port, Barnstable County, Massachusetts.

2. At all times material hereto, subrogor, John Augusta ("Insured" or "Mr. Augusta"), is the owner of record of real property located at 55 Alexander Booker Road, East Falmouth, Massachusetts, (the "Subject Property") which is the subject property of this lawsuit.

3. At all times material hereto, the Defendant, Nestle Waters North America, Inc. *d/b/a ReadyRefresh* ("Nestle" or "Defendant"), is a foreign corporation organized under the laws of the State of Delaware, with a principal place of business located at 900 Long Ridge Road, Building 2, Stamford, Connecticut, that was and is engaged in the design, manufacture, sale,

service, and/or distribution of hot and cold water dispensers throughout the United States of America, including the Commonwealth of Massachusetts, and with a registered agent, CT Corporation System, 155 Federal Street, Suite 700, Boston, MA 02110.

4. At the time of the incident giving rise to this suit, Barnstable had issued to Mr. Augusta, a policy of insurance, Policy No. HM00364529, containing a \$500.00 deductible.

5. In accordance with the governing insurance policy, Barnstable issued actual cash value claim payments to Mr. Augusta, subject to the policy's deductible, for the repair and/or replacement of his damaged property.

6. As a result, Barnstable is now legally subrogated to the recovery of the claim payments and deductible from the Defendant.

JURISDICTION

7. Jurisdiction of the subject matter for this action is conferred upon this Court pursuant to G.L. c. 212, § 3.

ALLEGATIONS OF FACT

8. At all times material hereto, Nestle, designed, manufactured, sold, serviced and/or distributed a line of Nestle Waters Cascade Profile hot and cold-water dispensers, one of which, Serial No.: IE06E05501, was rented from Nestle by Mr. John Augusta (the "Subject Product").

9. The Subject Product was used by the insured as reasonably intended, in its usual, customary, expected and intended manner.

10. At all times material hereto, however, the Subject Product was designed, manufactured, sold, distributed, assembled, and/or serviced in such a defective manner that, on or about February 19, 2020, the Subject Product leaked, causing extensive water damage to the Subject Property and the Insured's property.

FIRST COUNT
BREACH OF EXPRESSED WARRANTY

13. The Plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

14. The Defendant, though labeling, advertisement, and verbal representations, online and in print, directed to the attention of the public generally, expressly warranted that the Subject Product could be used for its intended or particular purpose and was safe and free from defects.

15. Pursuant to M.G.L. c.106, § 2-313, and in reliance upon such warranty made by the Defendant, the Insured did in fact rent and use the Subject Product from the Defendant.

16. At the time the Subject Product was rented and in use at the Subject Property, however, it was, in fact, defective, and not safe or reasonably suitable or fit for the purposes advertised.

17. As a result, the Defendant's expressed warranties were not true, and such breaches of warranty proximately caused the Plaintiff's damages as set forth herein.

SECOND COUNT
BREACH OF IMPLIED WARRANTY

18. The Plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

19. The Defendant impliedly warranted that the Subject Product was of merchantable quality, fit, safe and in proper condition for the ordinary use for which it was designed, manufactured, distributed and ultimately used, and in reliance upon the implied warranty of merchantability, the Subject Product was rented and operated as set forth above.

20. The Subject Product, however, was not of merchantable quality, and in fact, was not fit, safe, or usable for any purpose for which it was designed and/or manufactured, and

distributed. Therefore, as a direct and proximate result of the Defendant's breach of the implied warranty of merchantability, the Plaintiff was damaged as set forth herein.

THIRD COUNT
NEGLIGENCE

21. The Plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

22. The Subject Product was designed, manufactured, sold, serviced, and/or distributed by the Defendant with the reasonable expectation that it would be used by its consumers/renters for its intended purpose, and knew or should have known, in the exercise of ordinary care that if defectively designed or manufactured, the product was a potentially hazardous instrumentality.

23. In careless disregard for its duties, however, the Defendant did in fact negligently design, manufacture, sell, and/or service the Subject Product, and furthermore, allowed the defective Subject Product to enter the stream of commerce, causing the water release and Plaintiff's damages as set forth herein.

FOURTH COUNT
UNFAIR AND DECEPTIVE BUSINESS PRACTICES

24. The Plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

25. At all times material hereto, the Defendant was and continues to be engaged in interstate trade and/or commerce, including such business within the Commonwealth of Massachusetts.

26. The Defendant's aforesaid breaches of warranty and negligence in designing, manufacturing, distributing, installing, and/or servicing a defective and unreasonably dangerous

Subject Product constitutes an unfair and deceptive business act or practice within the purview of the Commonwealth's consumer protection statute, as set forth under M.G.L. c. 93A, §§ 2 and 9(4).

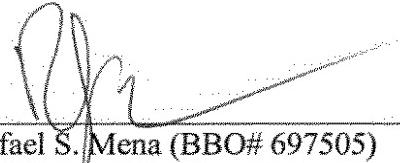
27. As a result of the above-described unfair and deceptive act or practice, the Plaintiff sustained extensive property damage resulting from the water release to include, but not limited to, damage to the Subject Property and personal property stored therein.

WHEREFORE, the Plaintiff, Barnstable County Mutual Insurance Company, as Subrogee of John Augusta, requests the following relief:

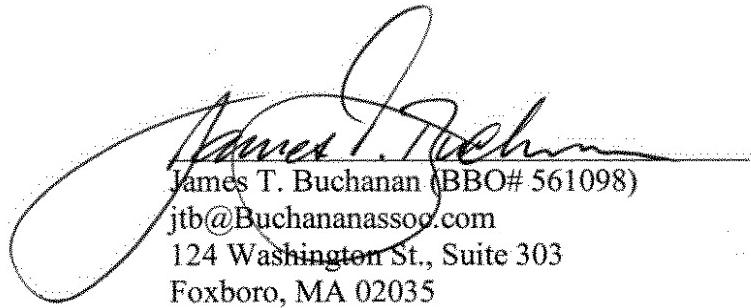
1. Enter judgment against the Defendant, Nestle Waters North America, Inc. d/b/a ReadyRefresh;
2. Enter judgment against the Defendant, Nestle Waters North America, Inc. d/b/a ReadyRefresh, pursuant to MGL Chapter 93A, with treble damages, attorney's fees, and costs;
3. Award damages to Barnstable County Mutual Insurance Company a/s/o John Augusta for an amount necessary to invoke the jurisdiction of this Honorable Court;
4. Award Barnstable County Mutual Insurance Company a/s/o John Augusta interest, costs, attorneys' fees and expenses; and
5. Award such other relief as this Honorable Court deems just and appropriate.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully Submitted,
On Behalf of the Plaintiff,
Barnstable County Mutual Insurance
Company, as Subrogee of John Augusta,
By its Attorneys,
BUCHANAN AND ASSOCIATES
ATTORNEYS AT LAW, P.C.



Rafael S. Mena (BBO# 697505)
Rafael.mena@buchananassoc.com
124 Washington St., Suite 303
Foxboro, MA 02035
TEL: 781-255-0330
FAX: 781-255-0339



James T. Buchanan (BBO# 561098)
jtb@Buchananassoc.com
124 Washington St., Suite 303
Foxboro, MA 02035
TEL: 781-255-0330
FAX: 781-255-0339

Dated:

3/12/21

CIVIL ACTION COVER SHEET		DOCKET NUMBER <i>21CV86</i>	Trial Court of Massachusetts The Superior Court												
PLAINTIFF(S): Barnstable County Mutual Insurance Company a/s/o John Augusta	ADDRESS: P.O. Box 339 Yarmouthport, MA 02675	DEFENDANT(S): Nestle Waters North America, Inc. d/b/a ReadyRefresh	COUNTY Barnstable												
ATTORNEY: Rafael S. Mena, Esq.	ADDRESS: 124 Washington Street, Suite 303, Foxboro, MA 02035	SUPERIOR COURT BARNSTABLE COUNTY MAY 15 2021													
BBO: 697505	CODE NO. B05 TYPE OF ACTION (specify) Products Liability	TRACK A	SOCIAL WORKER CLERK HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO												
*If "Other" please describe:															
Is there a claim under G.L. c. 93A? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO													
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A															
<p>The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.</p> <p>TORT CLAIMS (attach additional sheets as necessary)</p> <p>A. Documented medical expenses to date:</p> <table> <tbody> <tr><td>1. Total hospital expenses</td><td>\$</td></tr> <tr><td>2. Total doctor expenses</td><td>\$</td></tr> <tr><td>3. Total chiropractic expenses</td><td>\$</td></tr> <tr><td>4. Total physical therapy expenses</td><td>\$</td></tr> <tr><td>5. Total other expenses (describe below)</td><td>\$</td></tr> <tr><td colspan="2">Subtotal (A): \$</td></tr> </tbody> </table> <p>B. Documented lost wages and compensation to date</p> <p>C. Documented property damages to date</p> <p>D. Reasonably anticipated future medical and hospital expenses</p> <p>E. Reasonably anticipated lost wages</p> <p>F. Other documented items of damages (describe below)</p> <p>G. Briefly describe plaintiff's injury, including the nature and extent of injury: Plaintiff issued payments to its insured after insured's property was damaged by a water loss caused by a malfunction of a product designed, manufactured, and/or distributed by the defendant.</p> <p>TOTAL (A-F): \$ 66,621.84</p> <p>CONTRACT CLAIMS (attach additional sheets as necessary)</p> <p><input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a). Provide a detailed description of claim(s):</p> <p>Defendant's negligently designed, manufactured, and/or distributed product failed and leaked, causing Plaintiff's damages.</p> <p>TOTAL: \$ 66,621.84</p> <p>Signature of Attorney/ Unrepresented Plaintiff: X <i>[Signature]</i> Date: <i>3/12/21</i></p> <p>RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.</p> <p>CERTIFICATION PURSUANT TO SJC RULE 1:18 I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.</p> <p>Signature of Attorney of Record: X <i>[Signature]</i> Date: <i>3/10/21</i></p>				1. Total hospital expenses	\$	2. Total doctor expenses	\$	3. Total chiropractic expenses	\$	4. Total physical therapy expenses	\$	5. Total other expenses (describe below)	\$	Subtotal (A): \$	
1. Total hospital expenses	\$														
2. Total doctor expenses	\$														
3. Total chiropractic expenses	\$														
4. Total physical therapy expenses	\$														
5. Total other expenses (describe below)	\$														
Subtotal (A): \$															

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

AC Actions Involving the State/Municipality *

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA,etc. (A)

CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c.231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death - Non-medical (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

RP Summary Process (Real Property)

- S01 Summary Process - Residential (X)
- S02 Summary Process - Commercial/ Non-residential (F)

RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10 §28 (X)

AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c.240 §4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G. L. c. 93 §9 (A)
- E07 Mass Antitrust Act, G. L. c. 93 §8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149 §§29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c.12 §11H (A)
- E24 Appeal from District Court Commitment, G.L. c.123 §9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E95 Forfeiture, G.L. c.94C §47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231 §60B (F)
- Z02 Appeal Bond Denial (X)

SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A §12 (X)
- E14 SDP Petition, G.L. c. 123A §9(b) (X)

RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c.6 §178M (X)
- E27 Minor Seeking Consent, G.L. c.112 §12S (X)

TRANSFER YOUR SELECTION TO THE FACE SHEET**EXAMPLE:**

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	F	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

DUTY OF THE DEFENDANT - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
 FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
 MAY RESULT IN DISMISSAL OF THIS ACTION.**

2172CV00086 Barnstable County Mutual Insurance Company as subrogee of John Augusta vs. Nestle Waters North America, Inc. Doing Business as Ready Refresh

- Case Type:
- Torts
- Case Status:
- Open
- File Date
- 03/15/2021
- DCM Track:
- A - Average
- Initiating Action:
- Products Liability
- Status Date:
- 03/15/2021
- Case Judge:
-
- Next Event:

[All Information](#) [Party](#) [Tickler](#) [Docket](#) [Disposition](#)

Party Information

Barnstable County Mutual Insurance Company

- Plaintiff

[Alias](#)

Party Attorney

- Attorney
- Mena, Esq., Rafael S
- Bar Code
- 697505
- Address
- Buchanan and Associates
124 Washington St
Suite 303
Foxborough, MA 02035
- Phone Number
- (781)255-0330

[More Party Information](#)

Nestle Waters North America, Inc.

- Defendant

[Alias](#)

Party Attorney

[More Party Information](#)

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	03/15/2021	06/14/2021	91	
Answer	03/15/2021	07/13/2021	120	
Rule 12/19/20 Served By	03/15/2021	07/13/2021	120	
Rule 12/19/20 Filed By	03/15/2021	08/12/2021	150	
Rule 12/19/20 Heard By	03/15/2021	09/13/2021	182	
Rule 15 Served By	03/15/2021	05/09/2022	420	
Rule 15 Filed By	03/15/2021	06/08/2022	450	
Rule 15 Heard By	03/15/2021	06/08/2022	450	
Discovery	03/15/2021	03/06/2023	721	

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Rule 56 Served By	03/15/2021	04/04/2023	750	
Rule 56 Filed By	03/15/2021	05/04/2023	780	
Final Pre-Trial Conference	03/15/2021	09/01/2023	900	
Judgment	03/15/2021	03/14/2024	1095	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/15/2021	Early Case Management Conference Pilot Program.		
03/15/2021	Case assigned to: DCM Track A - Average was added on 03/15/2021		
03/15/2021	Original civil complaint filed.	1	Image
03/15/2021	Civil action cover sheet filed.	2	Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Pending		

We are currently investigating intermittent issues retrieving images. Thank you for your patience as we attempt to address the issue.